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NOTIFICATION OF ZONING HEARING EXAMINER'S AMENDED DECISION

DATE OF DECISION: December 16, 1994

HEARING EXAMINER: William F. Casey

RE: Zoning Appeal Case No. 4403

APPLICANT: White Marsh Properties, Inc.

LOCATION: Anchor Drive and Shore Drive, Joppa

**REQUEST: Variances to disturb Critical Area buffer, create
6 panhandles, and construct 16 piers**

After publication, errors were subsequently discovered to the December 1, 1994 Hearing Examiner's decision in the above referenced case. Enclosed is the amended decision which, specifically, deletes Condition No. 9, deletes and replaces Condition No. 12, and renumbers the Conditions.

This amended decision shall become final **JANUARY 5, 1995**, unless a written request for final argument before the County Council/Board of Appeals is filed before the expiration of the twenty (20) calendar day period by the Applicant/Applicant's Attorney, Opponents/People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Secretary of the Council, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

James D. Vannoy
Acting Secretary of the Council

Enclosure

cc: Applicant/Attorney
Opponents/Attorney
Adjoining Property Owners
Registered Hearing Attendees
Department of Planning and Zoning
Department of Law
People's Counsel

BOARD OF APPEALS CASE NO. 4403

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BEFORE THE

APPLICANT: WHITE MARSH PROPERTIES

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ZONING HEARING EXAMINER

REQUEST: Variances to disturb Critical
Area buffer, create 6 panhandles, and
construct 16 piers; Anchor Drive and
Shore Drive, Joppa

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/14/94 & 9/21/94

HEARING DATE: October 24, 1994 and
November 7, 1994

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Record: 9/16/94 & 9/23/94

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ZONING HEARING EXAMINER'S AMENDED DECISION

The Applicant, White Marsh Properties, Inc. is requesting a variance from the provisions of Harford County Code Section 267-22(G)(1) to allow more than one panhandle (6 proposed); a variance from the provisions of Code Section 267-41.1(G)(2)(a) to disturb within the 100 foot Critical Area Buffer; and a variance to Code Section 267-41.1(F)(7)(C)(1)(c)(vi)(b) to permit more than the required 15 piers (16 proposed).

The subject parcel is located at Anchor Drive and Shore Drive, Joppa Maryland 21085 in the Rumsey Island-Taylor's Pointe subdivision. The parcel consists of 12.44 acres and is more particularly identified on Tax Map 69, Grid 2A, Parcels 177, 178, 180 and 267. The property is located entirely within the First Election District and is presently zoned R4/CA/IDA/FP.

Ms. Arden Holdredge, Chief of Current Planning for the Harford County Department of Planning and Zoning was first to testify. The witness first described the differences between the Applicant's first proposal, a proposal which met with substantial opposition from the Department of Planning and Zoning and Critical Area Commission, and the present proposal. Ms. Holdredge explained that the differences between the two plans are elimination of structures within the Critical Area Buffer and the replacement of a cul-de-sac with a group of panhandle lots on a common drive. The revised layout reduced the number of lots from 19 to 16. The original layout indicated that thirteen (13) residences would encroach within the 100 foot Critical Area Buffer. The present proposal shows each of the homes at a minimum of 110 feet from the shore line except Lots 7 and 8 which are at the 100 foot mark. The total amount of impervious surface is 2.16 acres, representing a 29.0% reduction from the original proposal.

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Additionally, the originally proposed 19 piers has been reduced to 16. Ms. Holdredge went on to say that the present configuration of the lots is the optimum choice due to the unique topographical characteristics of the parcel and the environmental constraints on the property.

It was Ms. Holdredge's opinion that the Applicant had proposed appropriate mitigation relative to buffer disturbance and that it would be an unwarranted hardship to strictly enforce the CA regulations in this case. Additionally, the witness stated that there would not be any adverse impact to adjacent or neighboring properties as a result of the grant of the Applicant's request, nor would any special privilege be conveyed upon the Applicant not commonly enjoyed by other property owners. The witness also stated that there would be no adverse impact on fish or wildlife as a result of the proposed project. In conclusion, Ms. Holdredge stated that the Department of Planning and Zoning supported the proposed development subject to a number of conditions which were discussed at length (see amended Staff Report dated October 19, 1994).

Following the testimony of Ms. Holdredge, a number of area residents testified in support of the project.

The Applicant presented the testimony of Torrence M. Pierce, who qualified as an expert professional engineer and land planner. The witness generally described the development, the lot locations and the various areas of disturbance. The Critical Area disturbance will be between the homes and the waterline because of necessary grading to allow proper drainage. There are piers proposed for each of the properties except Lots 2, 3 and 4 which will share a common pier. As to the individual piers, a ten foot wide walkway is proposed. The witness described the general area of Rumsey Island utilizing a number of exhibits, pointing out that many of the homes in the area already encroach in the 100 foot buffer area although none of the proposed structures do so. The witness described the unique topographical factors of the parcel including the existence of a power line easement, that the parcel is virtually surrounded by water and is irregularly shaped. The witness then discussed each of the conditions of approval recommended by the Department of Planning and Zoning.

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In general, the witness felt that the conditions were far too restrictive and recommended some flexibility in the language of those conditions. As to proposed Department condition No. 5, the witness does not believe this to be appropriate, since this area is not proposed to be disturbed and is not part of the overall development.

Mr. Robert Jones appeared on behalf of the Applicant and qualified as an expert in the field of environmental planning. Mr. Jones described the entire project and then discussed the various environmental factors which will be impacted and/or mitigated. The witness stated that this entire portion of Rumsey Island was created by fill and that the Critical Area Buffer accounts for 45% of the developable parcel. There are no threatened or endangered species present. According to the witness, the present proposal reduce the disturbance to the buffer and is in substantial compliance with CA regulations, their intent and purpose. The creation of the panhandle lots has significantly reduced the amount of impervious surface and thus, reduced the post development pollutant loading. The witness stated that there will be no adverse impact on the waters of the Chesapeake Bay, fish or wildlife as a result of the development and further stated that all steps will be taken to mitigate disturbance.

The witness also discussed the proposed conditions and suggested some flexibility in the language. Additionally, the Department has suggested reforestation of trees within the buffer to which the witness agrees, however, the witness feels that 30 foot centers of plantings will be more than adequate while the Department wants a complete reforestation of the buffer.

Mr. Robert T. Nadler appeared in opposition to the request. The witness indicated that he had recently spoken to representatives of the Army Corps of Engineers and the Department of Natural Resources. The witness believes that neither of those agencies will approve permits for this development.

CONCLUSION:

The Applicant's request is subject to the following Code requirements:

Section 267-22(G)(1)

"Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots."

Section 267-41.1(G)(2)(a)

"Critical area buffer. An area a minimum one hundred (100) feet in width as measured from the mean high water line of tidal waters, tidal wetlands and tributary streams shall be established and maintained in a natural condition. This buffer area is to be expanded beyond one hundred (100) feet to include contiguous sensitive areas such as steep slopes, hydric soils or highly erodible soils whose development or disturbance may impact streams, wetlands or other aquatic environments. In the case of contiguous slopes of fifteen percent (15%) or greater, the buffer is to be expanded four (4) feet for every one percent (1%) of slope or to the top of the slope, whichever is greater in extent."

Section 267-41.1(F)(7)(c)[1][c][vi][b]

"A density of slips, piers or mooring buoys to platted lots or dwellings within the subdivision in the critical area according to the following schedule:

Platted Lots or Dwellings
in the Critical Area

Slips and Dwellings

Up to 15

1 for each lot

16 to 40

15 or 75%, whichever is greater

41 to 100

30 or 50%, whichever is greater

101 to 300

50 or 25%, whichever is greater

Over 300

75 or 15%, whichever is greater

Additionally, the Harford County Code, pursuant to Section 267-11, permits area variances, provided the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

Based on all of the testimony presented, the Hearing Examiner concludes that the proposed development is in substantial conformance with the Critical Area requirements and will not result in adverse impact to the waters of the Chesapeake Bay, neighboring properties or the public interest. The property is topographically unique, justifying the request and grant of the variances herein.

The Applicant and the Department of Planning and Zoning differed somewhat as to the proposed conditions of approval. In general, the Department has proposed very strict language which allows virtually no deviation, while the Applicant proposes somewhat more flexibility in regard to clearing and reforestation. By letter dated October 14, 1994, the State of Maryland Chesapeake Bay Critical Area Commission seems to favor a flexible approach to the conditions of approval.

The Department of Planning and Zoning has recommended, for example, the planting of trees within the Buffer to be on no less than 10 foot centers, while the Applicant has proposed the plantings on 30 foot centers. According to the Department of Planning and Zoning, no less than a complete, dense, reforestation is acceptable in the Critical Area Buffer. While the Harford County Code provides little specific guidance in this area, the specific provisions regarding IDA areas requires that all mitigation result in reduction of pollutant loadings by no less than 10%. The Applicant's environmental expert has indicated that this level has been exceeded and that 30 foot centers are adequate. The Harford County Code, pursuant to Section 267-41.1(G)(4)(a)(1) requires only that "The buffer be maintained in natural vegetation and may include planted native vegetation where necessary to protect, stabilize or enhance the shoreline." Based on the testimony presented, it appears to the Hearing Examiner that the planting of trees upon 30 foot centers, together with the planting of native shrubs and wildflowers shall accomplish the purposes set forth in the Code.

There was also discussion regarding the Department's recommended conditions of approval as they affect Lot 1. Lot 1 is presently developed with an existing residence. The Applicant asserts that there is no proposed disturbance on Lot 1; therefore, none of the Buffer reestablishment provisions or conveyance by easement of the Buffer area maintenance should apply. Presumably, the owner of Lot 1 would perform his own lot maintenance. The Applicant ignores, however, that the entire site, including Lot 1 has been submitted for approval as a single development.

Based on the testimony presented, the Hearing Examiner finds it appropriate to include Lot 1 within all of the conditions of development of this site. Having considered the arguments, the Hearing Examiner recommends approval of the Applicant's requests subject to the following conditions:

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1. A preliminary plan for the development of the site be submitted for review and approval through the Department of Planning and Zoning. This preliminary plan must be consistent with Attachment 17 of Applicant's amended petition. While minor modifications of the plan may be approved, the extent of buffer disturbance may not.
2. Existing overstory and understory vegetation is to be protected as much as possible during construction of water access and shoreline protection measures with the exception of a maximum 10 foot wide area perpendicular to the shore of each pier access which may be cleared as waterfront access. The single path clearing for the multiple pier off Parcel A shall also be no wider than 10 feet. Clearing of pier accesses and for shoreline stabilization shall be minimized and conducted only as necessary.
3. Selective clearing within the existing shoreline vegetation of exotic understory species shall be allowed pursuant to the Landscape Buffer Plan as approved by the Zoning Administrator.
4. For Lots 5-16 inclusive, rear yards shall be established so that the back yards will maintain a 75 foot natural vegetative buffer as much as possible. Within this area, 75 feet landward of mean high tide will be planted with 50 feet of native trees and 25 feet of native shrub species as listed in the Critical Area Commission recommended list of trees and shrubs. Native wildflowers may also be included. Density of plantings shall be such that pollutant loadings are reduced no less than 10.0% and trees shall be planted on centers no less than 30 feet apart.
5. In addition to afforestation of 75 feet of the Buffer on Lots 5-16, identified as Area of Buffer Establishment, a 250 foot long area between the proposed tennis court and shore be afforested with native trees and shrub species to establish a 75 foot wide naturally vegetated buffer consistent with the pattern established on Lots 5-16. The existing maintenance building shall be moved out of the 100 foot Buffer as shown on Applicant's plans. The area of Buffer establishment shall be expanded to include afforestation of the 75 foot Buffer from Lot 16 to the powerline easement area and between the proposed location of the maintenance building and the shoreline.

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6. Within 75 feet of the shore, no impervious surfaces or structures be installed or constructed during or after construction of the development with the exception of pier access paths and the piers.
7. The 75 foot wide area along the shore together with the areas of Buffer establishment on Lot 1 be encumbered by an easement to the Homeowner's Association which shall be responsible for the maintenance and preservation of the Buffer and its functions.
8. A Buffer Planting Detail Sheet be submitted concurrent with the submission of the preliminary plan. The Detail Sheet must show:
 - a. planting areas of native trees and shrubs 75 feet landward of mean high tide;
 - b. details of pier access including areas to be cleared and materials to be used to construct the pier access paths;
 - c. infiltration trenches, as necessary to meet the 10% pollutant loading reduction requirement, within 25 feet of the houses and no closer to the shoreline than 75 feet;
 - d. size and species of plant materials to be planted;
 - e. spacing between plantings;
 - f. soil amendments for plantings.
9. Calculations of pollutant loading removal to address the 10% rule shall be included with preliminary plan submittal.
10. Any wetland mitigation required by the Army Corps of Engineers and/or Maryland Department of Natural Resources be shown on the preliminary plan and final plats.
11. Wetland mitigation areas shall be protected pursuant to the Army Corps of Engineers Rules and Regulations and may include easement recordation and bonding.

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12. That Applicant obtain any and all necessary permits and inspections from all County, State or Federal regulatory agencies as may be required for this development.

Date December 16, 1994

William F. Casey
William F. Casey
Zoning Hearing Examiner